

**CITY OF SHORELINE
HEARING EXAMINER**

FINDINGS, CONCLUSIONS AND DECISION

APPELLANTS: Peter C. Schwindt

FILE NO: 197-01259 and 197-01258

APPEALS: Appeal of Preliminary Approval by Development Services Group,
of Short Subdivisions SHSP 97 038 and SHSP 97 040 (Exhibit A)

BACKGROUND INFORMATION:

A. Location and Neighborhood: The subject properties are located in the North City Neighborhood and have the street addresses of 2208 and 2220 NE 177th Street. Each property has a detached single family house which is to be retained and the lots are characterized by the presence of a number of large evergreen trees and other plants native to the area. Both properties slope from southeast to northwest with the average slope being 14.8%. The extreme northern portion of the property is designated as a Slide Hazard Area under the Shoreline Zoning Code.

B. The Proposal: The proposal is to subdivide the two adjacent properties into a total of eight residential building lots. The properties total 1.27 acres in size and the proposed lots would average 5,770 square feet in size. The lots range from a minimum of 5,022 square feet to a maximum size of 7,006 square feet. The eight lots are proposed to be served by one private joint access roadway located in approximately the center of the development in the location of the highest concentration of significant trees.

C. Comprehensive Plan and Zoning: The City of Shoreline adopted the King County Comprehensive Plan under Ordinance 10, July 10, 1995 which designates the North City Neighborhood as Urban Medium residential development (UM, 4 - 12 residential units per acre). The Zoning designation for the property is R-6 (Residential, six dwelling units per acre).

D. Procedural History: The applications were submitted on June 19, 1997 and accepted as being complete on August 18, 1997. Public notice of the applications was issued on August 19, 1997 and the public comment period remained open until September 23, 1997. The Development Services Group (DSG) received before the comment deadline 31 letters and a petition with 73 signatures which were all opposed to the proposals. Preliminary approval with conditions for the two applications was issued on February 5, 1998. A Mitigated Declaration of Non-Significance (MDNS) containing specific mitigations was also issued for these proposals on February 5, 1998.

E. Appeal: Peter C. Schwindt, neighbor to the proposal and a party of record, filed a timely appeal on February 19, 1998. The issues raised in the appeal include:

1. Traffic and Pedestrian Safety
2. Inadequate Road Access
3. Inadequate Sanitary Sewer
4. Defects in Surface Water Management Plan
5. Security Fencing Required
6. Landscaping Required under SEPA Mitigation
7. Housing Density Incompatible with Existing Neighborhood

On March 24, 1998, Peter C. Schwindt, submitted a letter with a reference to a decision by the Superior Court of the State of Washington For Chelan and Douglas Counties: North Cascade Conservation Council v. Chelan County, William Stifter, Patricia Stifter and Jim Weitzel (Chelan County Case No: 95-2-00815-6). The Appellant asked the Hearing Examiner to consider whether the issues in the case were applicable to the Preliminary Short Plat approval by DSG and whether it was actually premature to hold the appeal hearing. After reviewing the case, the Hearing Examiner notified the City of Shoreline and the Appellant on March 30, 1998 that the established Public Hearing on April 1, 1998 would not be canceled and that his preliminary review confirmed that the factors in the Chelan Case were not applicable to this preliminary approval.

PUBLIC HEARING:

On April 1, 1998 the Hearing Examiner held an open record Public Hearing on the appeal. The hearing was opened at 7:00 p.m. in the Mount Rainier Room of the Shoreline Conference Center and was closed at 10:30 p.m. Participants at the public hearing and the exhibits offered and accepted are listed in this record. A verbatim recording of the hearing is available in the City Clerk's office. The file of hearing exhibits is available for public inspection in the office of the Development Services Group.

At the beginning of the Public Hearing the Hearing Examiner indicated that he had visited the sites and driven through the immediate neighborhood. He noted that he had reviewed the application, the staff report and the appeal letters. He reviewed the rules of procedure for the hearing.

The Hearing Examiner noted that the legitimacy of the City of Shoreline issuing the preliminary approval of the short plats had been raised by the Appellant and that it may be premature to hold this hearing. It was the finding of the Hearing Examiner that the Chelan Case was not applicable to this situation and the public hearing on the appeal would proceed.

Testimony was offered at the public hearing by the Development Services Group, City of Shoreline, as well as the appellant, the applicant and citizens. Testimony was taken under oath. Testimony which was offered is summarized in the following:

City of Shoreline:

The Hearing Examiner requested that the City respond point by point to the appeal issues. Anna Kolousek, Director, Development Services Group, indicated that James Holland, Chuck Purnell and she would provide the City's testimony.

James Holland, Senior Planner, reviewed the staff report (Exhibit B), presented Exhibit O showing that a portion of the site is a slide hazard area under the provisions of the City's sensitive areas ordinance. He noted that the proposals were reviewed under SEPA and a Mitigated Declaration of Significance was issued with appropriate conditions which were incorporated into the Preliminary Approval. He also withdrew paragraph three of the Preliminary Approval cover letter dated February 5, 1998.

Chuck Purnell, Project Engineer, DSG, responded to engineering issues raised in the appeal:

- Traffic and Pedestrian Safety: He indicated that the additional 6 houses would create minimal increases in trips and foot traffic and it was decided to not request sidewalks in order to retain existing vegetation along NE 177th Street.
- Inadequate Road Access: Issues of the slope of the proposed joint access drive and sight distance are addressed in the road standards. He indicated that the access road will be 20 feet in width with a sidewalk and will be built within the 26 foot tract. He noted that the fire district and garbage collection both had indicated that the width and turn-around were sufficient for their needs; however the fire district is requiring sprinkler systems in the houses.
- Inadequate Sanitary Sewer: He noted that the City had certification of adequacy of both Water and Sewer availability.
- Surface Water Management Plan: He noted that there were indications of individual site drainage systems; however they are requiring a unified site collection and detention system. That system will be designed under the provisions of the preliminary approval. The applicant will have to post a two year bond to assure that any deficiencies in the system are corrected as well as make provisions for ongoing maintenance.

James Holland addressed the following issues of the appeal:

- Landscaping required under SEPA mitigation: He noted that a condition is to do a survey of significant trees which will be utilized to refine the layout of the road and the lot configurations to assure retention of as many trees as possible. In response to a question from the Hearing Examiner he noted that the City does not have specific tree retention policies or regulations; however, there is some discussion about their retention in subdivision and sensitive areas regulations.

- Housing Density: He noted that the Comprehensive Plan identifies 4 dwelling units per acre as the minimum single family residential density. The Urban Medium designation is applied to 85% of the City of Shoreline and has a density range of 4 to 12 dwelling units per acre. The zoning on the site allows 6 dwelling units per acre with a minimum lot size of 5,000 square feet.

- Compatibility with Existing Neighborhood: He discussed that the transition from the existing pattern of development to new development consistent with the plan and regulations is considered by staff in trying to make as good a fit as possible.

Anna Kolousek responded to the following issues:

- Was it an error to accept the short plat application? She noted that the City is obligated to accept and process applications which meet City Comprehensive Plan and Development Regulations and procedures.

- Does destruction of neighborhood character matter? She noted that the issue is that of comprehensive plan exceptions verses the existing pattern of development and plan and code provisions for infill development. She noted that they are trying to balance the existing neighborhoods as well as to meet future growth demands.

- Security Fencing Required: She noted that the City cannot require fencing around the site.

The Hearing Examiner asked if the existing houses met setback requirements and it was indicated by staff that they would meet the minimum 5 foot setbacks required.

Appellant: Peter C. Schwindt (Exhibit L contains complete remarks, references and exhibits)

Peter C. Schwindt, appellant, presented his appeal of the Preliminary Approval of the two Short Plat Applications. He noted that he appreciated staff assistance and response during the process. He indicated that he felt there were two key issues: Safety and the adverse impact on Neighborhood Character. He feels that the Preliminary approval of the short plats leaves so many questions unanswered that it is difficult to know what the final short plat will actually be and that then it is too late for public involvement. He indicated that a statement in the staff report that the plat had the "potential to comply" was not adequate and that they should base their preliminary decision on analysis that it was actually in conformance.

The Appellant indicated that their appeal enumerates several specific problems with the preliminary approval by DSG of the short plats. Since the entire presentation by the Appellant is included in Exhibit L, the following summarizes the specific code references for each issue:

1. Inadequate Road Access:

SMC 18.28.060 requires that all new developments be served by adequate access roads. Exhibit F was submitted highlighting the proposed 18 foot road width and the areas of impervious surface. It was noted that the King County Road Standards (KCRS) adopted by the City of

Shoreline require 22 feet in width in Sections 2.03 (Residential Access Streets), 2.06 (Private Streets), and 2.09.B (Private Access Tracts). KCRS 2.09.B also requires a minimum width for the private access tract of 26 feet and based on his analysis allows only 6 lots to be served; therefore, this proposal would require a 40 foot tract. (Hearing Examiner Note: A review of the KCRS indicates that there is an apparent conflict in the number of lots allowed to be served.) It is further noted that this width can be reduced if a separate provision is made for utilities (It was clarified by staff that services to individual lots are not considered utilities for purposes of this provision). In addition, KCRS Section 2.08 (Cul-de-sacs) specifies that when more than 6 lots are served that it must have a bulb consistent with adopted standards. The proposal is served by a hammerhead. KCRS further state that "Private streets may be approved only when they are accessible at all times for emergency and public service vehicle use;" The appellant states that his conversations with Eastside Disposal that it was not clear whether their garbage trucks will be able to use the roadway. He felt that the fire district requiring fire sprinkler systems is a tacit admission that the road does not comply

The Appellant disagrees with DSG's contention that they have "considerable discretion to tailor access requirements to meet the specific conditions of the project site and neighborhood road system" because it specifically states in Section 2.06 (Private Streets) that private streets may be approved only if they conform to road standards. DSG also identifies the ability for variances (SMC 12.42.060); however, the applicant notes that there is nothing in the record to indicate a variance has been requested.

2. Traffic and Pedestrian Safety on NE 177th Street

The Appellant submitted Exhibits G-1 and G-2 to substantiate that a lack of a shoulder and narrow pavement on NE 177th Street will create hazardous driving and pedestrian conditions. It was also noted that the steep grade of the access drive from the proposed short plats will likely create sight-distance problems. The Appellant requests that No Parking signs be placed along NE 177th Street; that a pedestrian walkway be placed on the easterly boundary of the plats to 22nd Avenue NE; and that the access drive be filled to meet City standards with adequate sight distances.

3. Defects in Surface Water Management Plan

The Appellant expressed a number of concerns related to the surface water management plan:

- Average slope of the site at about 15% with even greater slope and sensitive areas at the north end of the property;
- Substantial degrading of the water absorbing properties of the site will occur when the present vegetation is reduced significantly for construction (Exhibits H and I);
- Concern about the operation of a surface water retention pond (Note: The Appellant wanted to show a video of a failed retention pond; however, the attorney for the applicant objected that there was no way of knowing that it was a similar situation or built under the same

requirements. The Hearing Examiner upheld the objection and did not allow the video to be entered.) It was noted that if such a detention pond is utilized, that it should be fenced.

- Concern that a two year bond was not long enough and no provision for ongoing maintenance appeared to be included; and,
- Potential lack of ability to obtain an easement to convey runoff to 25th Ave. NE.

4. Landscaping Requirements

The Appellant questions the vagueness of DSG's condition to identify, map and preserve mature trees and vegetation and to reestablish vegetation after construction. The Appellant feels that this work should be required to be done by a certified arborist or Landscape Architect. They are concerned particularly about the preservation of the trees fronting NE 177th Street.

5. Housing Density and the fact that it would seriously and adversely affect the existing neighborhood.

The Appellant submitted Exhibits J and K and referred to Exhibit I to illustrate the quality of the existing neighborhood and the current size of lots. It was noted that the proposed development is not consistent with the criterion of "harmonious groupings of compatible and complementary land uses" as defined in SMC 18.02.030. It was further stated that a request to the City Manager to have the developer submit proof in a public forum that his subdivision was, in fact, in the best interest of the public welfare was not acted upon.

Applicant

Jeffery Eustis, Attorney representing Carefree Homes, summarized:

- Soils Engineer will design a system to accommodate a 100 year detention facility that meets King County surface water management standards - among the best in the country;
- Separate access could be provided to two plats which would have a substantially wider tract and more impervious surface;
- This is a preliminary approval which establishes the general road and lot layout prior to further studies and detailed engineering;
- Final plat documents are available to the public and they can talk to the staff;
- This is a conditional approval and that they must meet all conditions and standards. He noted that the City's ordinance provides for certain trade-offs in road width, etc. to decrease impervious surface and drainage requirements;
- An 18 foot road width is not inadequate to serve 8 lots;
- SEPA review and authority is not unlimited but must show the demonstration of unusual circumstances;
- Landscaping requirements contained in SEPA conditions were not appealed; however, there is limited requirement in City codes for tree retention (The applicant noted they would work to preserve trees in their SEPA Checklist); and

- Housing density is consistent with City of Shoreline plans and regulations.

He noted that they do not believe that the appeal should be upheld or that there is any need for modification of the Preliminary Approval. He noted that many of the issues brought up by the Appellant need to be addressed legislatively by the City Council.

Public Testimony

Jim Leigh expressed concern about the proposal and the affordability of the homes and the detention pond.

Clark Elster expressed concern about the width of streets to provide for service vehicles and that any detention facility would be in the lower part of the site in the same location as the main sewer. He had experienced land subsidence on his property.

Steve Kirshner submitted documentation on drainage, easements and neighborhood character. The attorney for the applicant challenged whether information contained in his packet related to the failed detention system. It was noted that if it did, it would be removed (Exhibit M).

Liane Newman (submitted letter, Exhibit N) testified that she is concerned about the run-off. She noted there has been flooding and slopes have sloughed off due to failed drainage systems. She indicated that concern had also been expressed by the City Planner in Lake Forest Park.

Ruth Volkmann expressed appreciation for Dr. Schwindt's effort. She felt the roadway was too narrow on which to build 8 houses.

Doug Kjos who lives to the north of the property expressed concern about the road width being very restrictive for fire engines. He noted that children now go through the property and that they do need a fence. Further he said that when water saturates the soil and with fewer trees to provide wind protection, he is concerned about losing even more trees.

Bill Bennett, Stream Keepers, noted that this property lies right on the lip of a terrace that feeds a number of springs. He is concerned about the unintended consequences of development on the site and the need for detailed studies of the sub-surface hydrology as well as surface drainage.

Lola Mooney, adjoining property owner, is concerned about the drainage impact on her property, the density and the potential impact on the sewer at the lower end of the property.

Felice Schwindt expressed her concern about the lack of sidewalks and the safety of school children on NE 177th Street.

FINDINGS, CONCLUSIONS AND DECISION:

After reviewing the application, the Preliminary Approval with Conditions, the letter of appeal, the staff report and all testimony submitted in writing and by witnesses at the public hearing, and after viewing the subject properties and their surroundings, the Hearing Examiner hereby enters the following Findings, Conclusions and Decision:

I. FINDINGS:

- A. The primary issues related to this appeal are whether the City of Shoreline Development Services Group erred in issuing the preliminary approval and did adequately consider road standards and procedures to grant variances, sewer adequacy, surface water management, tree retention and landscaping, and housing density as proposed being incompatible with the existing neighborhood.
- B. The rules of procedure adopted by the City of Shoreline for appeals to the Hearing Examiner place the burden on the appellant for establishing that the decision is not supported by the preponderance of the evidence.
- C. The City of Shoreline adopted the King County Road Standards - 1993 as Chapter 14.42 by Ordinance No. 16.
- D. Extensive public comment in opposition to these short plats was received during the comment period on the applications prior to preliminary approval.
- E. The approval of a private street seems to be limited by the statement in Section 2.06 Private Streets that it may be approved only (emphasis added) when they are (B.2) "Built to King County Road Standards, as set forth herein, . . ." The short plats as proposed with a private access street do not appear to meet these adopted standards in the following ways:
 - 1. Minimum pavement width required is 22 feet - the proposal is 18 feet;
 - 2. Reduced tract width to 26 feet is limited by a 150 foot maximum length; and,
 - 3. Use of a hammerheads in lieu of a cul-de-sac.
- F. Section 1.08 Variances of the adopted King County Road Standards - 1993, indicates that variances from the standards "may be granted by the Engineer upon evidence that such variances are in the public interest and that requirements for safety, function, fire protection, appearance and maintainability based upon sound engineering judgment are fully met." It further notes that variance requests for subdivisions should (emphasis added) be proposed at preliminary plat stage and prior to any public hearing. It also notes that variances must be approved prior to final approval of the engineering plans for construction.

G. Strict application of the road standards would essentially make this site situation worse by likely reducing the number of trees which can be retained and increasing impervious surfaces. However, there is no documentation in the record for making these reductions consistent with the variance criteria, if applicable.

H. Although the Appellant notes that Section 2.09.B.1 (Alleys and Private Access Tracts) limits the maximum number of parcels to six, the provisions of 2.03 Residential Access Streets for a Urban Minor Access Street and Section 2.06 Private Streets both reference 16 single family dwelling units.

I. The construction of this proposal is likely to have significant impact on the character of the neighborhood in that a number of the existing trees and understory will be removed.

II. CONCLUSIONS

A. The situation in the Chelan Case is not applicable in that the Board of Adjustment in that case failed to make a specific finding required for their approval and allowed an administrative body to review the information necessary for that finding and allowed them, essentially , to make the decision. In this case, this is an administrative action for preliminary approval with conditions having to be met prior to final approval.

B. The eight lots as proposed and their size and configuration are consistent with the provisions of the City of Shoreline Comprehensive Plan and Zoning Regulations; however, conditions applied for access, tree preservation, protection of sensitive areas and provision of an acceptable surface water management plan may necessarily result in the reduction of the number of lots. The use of a private street does not limit the development of this parcel to 6 single family dwelling units.

C. The City of Shoreline has adequately documented the adequacy of water supply, sewer service, and fire protection.

D. The conditions for short plat final approval and the SEPA mitigations are adequate to address concerns related to surface water management and landscaping. In both cases, the effectiveness of the final product rests with the not only review by City staff but also monitoring during construction.

E. There is nothing in the record which indicates that the Applicant has requested variances from the KCRS adopted by the City of Shoreline. Although the application indicates what is proposed, there is no indication that the lack of a sidewalk on NE 177th Street, reduced width of the private joint access street, width and length of the road tract or use of a hammerhead turnaround are not in accordance with adopted standards.

F. It is not clear whether the authority to grant a variance is broad enough to be applicable to a Private Street since the language notes they can be approved only if they meet KCRS standards.

G. Although the language in the KCRS for a variance is permissive in that variances should be considered at the preliminary approval, there is no record that the City Engineer has even considered them. It appears from the testimony offered by the City that the reasons for deleting a sidewalk on NE 177th Street and the reduced widths of pavement for the access street is to reduce the amount of impervious surface and to enhance the ability to retain as many trees as possible on the site. This appears to be consistent with the language allowing variances, if applicable to a private street; however, it should be spelled out.

H. The procedure of granting a Preliminary Approval for a short plat allows an orderly, cost effective process providing the applicant the information on what conditions have to be met in the studies and engineering for Final Approval. In this regard, the City of Shoreline requirements for road grades, intersection sight-distances, surface water management plans etc. will have to be met.

III. DECISION

The Appeal is partially granted in that the Preliminary Approval of the Short Plats is remanded back to the Development Services Group, City of Shoreline, for further consideration of the following items prior to reissuing the Preliminary Approval:

A. The applicant should specifically identify and apply for necessary variances from the King County Road Standards with appropriate documentation as to how they meet the criteria;

B. The City shall document the criteria, rationale and authority for granting variances which will occur during the Final Approval process; and,

C. As a courtesy to the parties of record, the City will notify them of the receipt of the final plat documents from the developer so they have an opportunity to review and discuss them with staff prior to Final Approval by the City.

Further, the City of Shoreline, DSG should review its procedures on variances from KCRS to assure that the public is fully aware of any variances that are being requested prior to the comment period during the preliminary approval process. The lack of detailed procedures for processing road variances has been noted previously on appeals of short plats.

EXHIBITS:

The following exhibits were offered and entered into the record:

Exhibit A Appeal of Carefree Homes Short Subdivisions
 Submitted by Peter C. Schwindt et al

Dated February 19, 1998
Filed with City Clerk February 19, 1998

- Exhibit B Staff Report to the Hearing Examiner
 Submitted by James Holland, Development Services Group,
 City of Shoreline
 Not dated - Received in City Clerks Office on March 24, 1998
- Exhibit C Letter to Hearing Examiner from Peter C. Schwindt
 Dated March 24, 1998
 Submitted to City Clerk's Office on March 25, 1998
- Exhibit D Letter to Peter C. Schwindt and James Holland (DSG) from
 the Hearing Examiner (Response to 3/24/98 letter - Exh. C)
 Dated March 30, 1998
- Exhibit E Letter from Mamie Bolender, 16730 - 32nd Place N.E., Lake Forest Park, WA
 Dated April 1, 1998
 Submitted to City Clerk's Office on April 1, 1998
- Exhibit F Chart - "Short Plat Construction Plan with building and impervious surfaces and
 18 foot width of paving noted"
 Submitted at hearing by Peter Schwindt, Appellant
- Exhibit G-1 Photographs (4) - "Narrow Street Causes Traffic and Pedestrian Hazards"
 Submitted at hearing by Peter Schwindt, Appellant
- Exhibit G-2 Photographs (2) - "Steep Grade Creates Sight-Distance Problem"
 Submitted at hearing by Peter Schwindt, Appellant
- Exhibit H Photographs (6) - "Existing lots to be subdivided are heavily vegetated. Houses
 lie directly downstream"
 Submitted at hearing by Peter Schwindt, Appellant
- Exhibit I Photograph (1) - "A recent subdivision on Serpentine N.E. near N.E. 177th. What
 we don't want!"
 Submitted at hearing by Peter Schwindt, Appellant
- Exhibit J Photographs (8) - "N.E. 177th Street Neighborhood: Unique in non-covenant
 Shoreline"
 Submitted at hearing by Peter Schwindt, Appellant
- Exhibit K Chart - "Lot sizes on N.E. 177th Street"

Submitted at hearing by Peter Schwindt, Appellant

- Exhibit L Presentation notes by Peter Schwindt with code references attached
Submitted at hearing by Peter Schwindt, Appellant
- Exhibit M Photographs of proposal site (16); Articles; Plat Maps of adjacent short plats and
photographs of plat vegetation removal and resulting drainage issues; Drainage
and Zoning Maps of Lake Forest Park
Submitted at hearing by Stephen Kirschner, 17716 - 22nd Avenue N.E.,
Shoreline, WA
- Exhibit N Letter from Liane Newman, 16715 - 32nd Place N.E., Lake Forest Park, WA
Dated March 31, 1998
Submitted at hearing by Liane Newman
- Exhibit O Chart - Drawing of Carefree Homes Subdivision
Submitted at hearing by James Holland, DSG, City of Shoreline

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Entered this 20th day of April, 1998. The decision of the Hearing Examiner shall be the final decision on any appeal.



Robert G. Burke, Hearing Examiner

APPEAL OF HEARING EXAMINER'S DECISION:

Pursuant to Ch. 347 of 1995, Sec. 705, this decision may be appealed by filing a land use petition in Superior Court and serving all persons entitled to serve under 705 within 21 calendar days of the date the decision was mailed to the parties of record. At the end of the 21 day period, if no appeal has been filed, the decision of the Hearing Examiner shall become final and any appeal is thereafter barred. The last day for filing an appeal is May 12, 1998. The appeal must be filed with King County Superior Court, King County Clerk's Office, Room E-609, King County Courthouse, 516 Third Avenue, Seattle, Washington.